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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,568	01/25/2007	Joachim Bruchlos	DE920030038US1	7936

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MOORE & VAN ALLEN, PLLC For IBM
P.O. Box 13706
Research Triangle Park, NC 27709

EXAMINER	
RAVETTI, DANTE	

ART UNIT	PAPER NUMBER
3685	

MAIL DATE	DELIVERY MODE
10/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/596,568	BRUCHLOS ET AL.	
	Examiner	Art Unit	
	DANTE RAVETTI	3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) *1-20 and 30-34* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-29 and 35-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 June 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgements

1. This communication is in response to the amended Application No. 10/596,568 filed on June 19, 2009.

2. Claims 1-20 have been canceled by the Applicant.

3. Claims 30-34 have been withdrawn by the Applicant.

4. Claims 21-29 and 35-40 are currently pending and have been fully examined.

5. For the purpose of applying the prior art, PreGrant Publications will be referred to using a four digit number within square brackets, e.g. [0001].

Priority

6. Priority for this application is set to 12/22/2003, the filing date of the foreign priority application #: 03104906.7 in the European Patent Office (EPO).

7. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original non-provisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. §112.[1]

Specification

8. Objection to the Specification is being made. The title of the invention is not sufficiently descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested: "Receiving licensed content based on parameters stored in cache memory"

Response to Applicant Remarks/Amendments

9. Applicant's response filed on June 19, 2009 has been fully considered, but is moot in light of new grounds of rejection.

As to claim 22, Applicant recites, "...which indicates **if** the meter event request is allowed...." The MPEP interprets claim limitations that contain "if, may, might, can, when and could" statement(s), as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.[2] Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.[3]

Claims 24-25, 29, 35-36 and 38-39 also contains similar language as found in claim 22.

Examiner would also like to point out that **Official Notice** was used in the previous office action mailed on March 27, 2009 to indicate that evaluating the status of the at least one parameter comprises evaluating a status of a Boolean parameter which

[1] See Transco Products, Inc. v. Performance Contracting, Inc., 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).
[2] In re Johnston, 77 USPQ2d 1788 (Fed. Cir. 2006);
[3] MPEP §2106 IIC;

indicates if the meter event request is allowed to be stored in the cache memory and deleting, by the metering handler, the entire contents of the cache memory. Since Applicant has not attempted to traverse this Official Notice statement, Examiner is taking the common knowledge or well-known statement to be admitted prior art.

Examiner would like to point out that the language of claim 1, and in others, describes, "non-functional descriptive material." For example, as to claim 1, Applicant recites, "...**wherein**[4] said at least one parameter is associated with the service request and a predefined convention, a...." As to claim 2, Applicant recites, "**wherein**[5] the evaluating the status of the comparing at least one parameter comprises evaluating a status of a Boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory." However, this is an example of non-functional descriptive material.[6]

Claim Rejections - 35 USC § 112, 1st Paragraph

10. The following is a quotation of the first paragraph of 35 U.S.C. §112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 21-29 and 35-40 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

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[4] Wherein --MPEP 2114; In re Swineheart, 169 USPQ 226; In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997); While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone.

[5] Id.;

[6] In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II; Where the printed matter is not functionally related to the substrate, the

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As to claim 21, Applicant recites, "the meter event request in the cache memory or sending the meter event request and an **entire contents content of the cache** memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;" however, Applicant Specification recites:

> [0039]If in the step 26 the number of meter event requests in said dedicated cache memory equals the defined amount specified by the CFP, **all meter event requests are transferred from said cache memory to the metering service invocator** according to step 28. Finally the content of said cache memory is deleted according to step 30.
>
> [0049]The cache controller 66 receives the generated meter event request from the cache enabler 64. The maximum number of meter event requests which may be stored in the cache memory 70 is defined by the CFP. The cache memory 70 stores temporarily these meter event requests. Preferably, the cache memory 70 is physically a RAM memory area. The CFP monitor 68 supervises the amount of meter event requests which are stored within the cache memory 70 and takes care that the maximum number defined by the CFP will not be exceeded. If the number of the meter event requests in the cache memory 70 equals the defined amount specified by the CFP, the cache controller 66 transfers all meter event requests to the metering service invocator 72 and finally deletes the content of the cache memory 70. **The metering service invocator 72 sends all meter event requests to a metering service which is not necessarily a component of the metering handler 50.**

Applicant's Specification, filed on 6/16/2006, seems to be silent this feature of "...sending the meter event request and an **entire contents content of the cache memory to a metering service**...." Applicant's Specification states "...the **content of said cache memory** is **deleted** according to step 30." The appropriate correction is required.

Claim 35 contain similar language or like deficiencies as found in claim 21. The appropriate correction is required.

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printed matter will not distinguish the invention from the prior art in terms of patentability .... [T]he critical question is

Claims 22-29 and 36-40 are also rejected for being dependent upon rejected claims 21 and 35. The appropriate correction is required.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. §112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claim 21-29 and 35-40 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps.[7] The omitted steps are: storing received meter events in cache memory; It is unclear to the Examiner how the comparing can be performed with the requests stored in cache memory, without first storing the requests there. The appropriate correction is required.

Claim 35, contains similar language or like deficiencies as found in claim 21. The appropriate correction is required.

Claims 22-29 and 36-40 are also rejected for being dependent upon rejected claims 21 and 35. The appropriate correction is required

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whether there exists any new and unobvious functional relationship between the printed matter and the substrate;
[7] See MPEP § 2172.01;

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. Claims 21-29 and 35-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bunch (US 6,795,856) ("*Bunch*") and in view of Coley et al., (US 2001/0011253) ("*Coley*").

As to claims 21 and 35:

Bunch teaches substantially as claimed:

> receiving, by a metering handler, a service request message from a service consumer (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);
>
> generating, by the metering handler, a meter event request associated with the service request (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-67), 9Col. 9, lines 22-33), Figures 1-2, 5-6);
>
> evaluating, by the metering handler, a status of at least one parameter (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);
>
> storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison (Col. 8, lines 1-13);
>
> wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory (Abstract, (Col. 3, lines 14-

35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

Bunch does not expressly teach:

> comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

However, *Coley* expressly teaches:

> comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter ([0024]-[0027], [0060], [0064]-[0066], [0074], [0081], [0104]);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Bunch* to include the features of *Coley* because they both teach the use of cache to store user information.

As to claims 22 and 36:

Bunch does not expressly teach:

> wherein the evaluating the status of the at least one parameter comprises evaluating a status of a Boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory.

However, evaluating the status of a Boolean parameter which indicates if the meter request is allowed to be stored is old and well known in the art.

As to claims 23 and 37:

Bunch does not expressly teach:

> evaluating, by the metering handler, a value of an integer parameter associated with the Boolean parameter; and
>
> comparing, by the metering handler, said value of the integer parameter with the amount of stored meter event requests stored in the cache memory.

However, *Bunch* does expressly teach:

> (36) Also, the timer application 44 processes the URL requests from the hook interface 40. The timer application 44 logs all the URL requests in the temporary history log cache 48 on a time-spent per page basis. By logging all the times that URL requests are made, the system can create a comprehensive representation of a user's Internet activities. (Col. 7, lines 25-30);
>
> (40) 3. The temporary history log cache 48 will contain the sequence of URL, begin time and time spent records in memory on the client module 26. (Col. 7, lines 40-45)
>
> (43) The temporary log cache 48 stores the time stamped URL requests sent from the timer application. Also, the temporary log cache 48 stores the gateway web site. The gateway web site is the web site the user is directed to after authentication. The gateway web site can either be determined by the subscriber (employer) or through commercial arrangements with various companies interested in becoming a point of entry for users. This can be established by creating a brief user profile upon user registration. The user can then be introduced to a number of sites which are of particular interest to their profession or group. This entry point is similar to the home page concept, with the exception that it cannot be changed by the user. (Col. 8, lines 1-15);
>
> (50) Periodically, at step 60, the client monitoring module 26 reconnects to the server web site. Upon reaching preset limits (such as number of records, time elapsed, etc.) or on termination of the browser process, the client component 26 will transmit this cached information to the web site server 30. The latter will store this information in a database under the appropriate user's history log. (Col. 8, lines 55-67);

Therefore, a predictable result of *Bunch* would have been to evaluate a parameter and to compare that parameter with an amount stored in cache memory.[8]

As to claims 24 and 38:

Bunch expressly teaches:

> further comprising sending, by the metering handler, the meter event request to the metering service in order to process the meter event request (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

[8] Ex parte Smith, 83 USPQ2d 1509 (Bd. Pat. App. & Int. 2007); Claims in application for patent on pocket insert for book are obvious in view of combination of two prior art patents, since claims are combinations that merely unite old elements with no change in their respective functions, and which yield predictable results, since neither applicant's specification nor her arguments present any evidence that modifications necessary to effect combinations are uniquely challenging or difficult for person of ordinary skill in art, and since claimed improvement is no more than simple substitution of one known element for another, or mere application of known technique to piece of prior art ready for improvement.

Bunch does not expressly teach:

> deleting, by the metering handler, the entire contents of the cache memory if the actual number of the meter event requests in the cache memory equals or increases the value of the integer parameter

However, deleting the entire contents of cache memory if the actual number of the meter event requests in the cache memory equals or increases the value of the integer parameter is old and well known in the art.

As to claims 25 and 39:

Bunch expressly teaches:

> wherein the meter event request is stored in the cache memory when the actual number of the meter event requests in the cache memory is less than said value of the integer parameter (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

As to claims 26 and 40:

Bunch discloses as discussed above; however, *Bunch* does not expressly disclose:

> wherein the predefined convention is defined in a license contract which relates to kinds and amount of services between a service provider and the service consumer.

However, *Coley* expressly teaches:

> wherein the predefined convention is defined in a license contract which relates to kinds and amount of services between a service provider and the service consumer ([0024]-[0027]);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Bunch* to include the features of *Coley* because they both teach the use of cache to store user information.

As to claim 27.

Bunch expressly teaches:

> wherein a relevant information is separated, by the metering handler, from the service request message after receiving the service request message ((Col. 3, lines 14-35; 40-50), (Col. 4, lines 14-20));

As to claim 28:

Bunch expressly teaches:

> wherein the relevant information of the service request message comprises at least one of request data, contract data, license data, the boolean parameter, the integer parameter and the identity of the service consumer ((Col. 3, lines 14-35; 40-50), (Col. 4, lines 14-20));

As to claim 29:

Bunch expressly teaches:

> counting, by the metering handler, the services when the associated meter event request is sent to the metering service (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6); and
>
> sending, by the metering handler, the actual counting results to at least one of a service provider and the service consumer (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6).

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

> - DeKoning et al., (US 5,761,705); Claim 7. The method of claim 1 wherein each of said cache memories has a validity boolean attribute indicating, if having a value of true, that the associated cache memory has remained non-volatile and wherein each of said cache memories has a native boolean attribute indicating, if having a value of true, that the contents stored in the cache memory was last associated with the RAID storage subsystem and wherein the determining step includes:
>
> Claim 13. The apparatus of claim 9 wherein each of said cache memories has a native boolean attribute indicating, if having a value of true, that the contents stored in the cache memory was last associated with the RAID storage subsystem and wherein the means for determining includes:
>
> - Fujii et al., (US 6,119,150); The parallel processor system further includes an inter-processor network interconnecting the processors, a first circuit which, when the content of the main memory location to store the data that the processor has received through the inter-processor network differs between the cache memory and the main memory, copies back the content of the main memory from the cache memory to the main memory and erases from the cache memory the content of the main memory to store the received data, and a second circuit for writing the receive data into the main memory after the erase operation by the first circuit. (Col. 3, lines 27-45);

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Mr. Dante Ravetti whose telephone number is (571) 270-3609. The examiner can normally be reached on Monday – Thursday 9:00am-5:00pm.

If attempts to reach examiner by telephone are unsuccessful, the

examiner's supervisor, Mr. Calvin Hewitt may be reached at (571) 272-6709. The fax phone number for the organization where this application or proceeding is assigned is (571) 270-4609.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system see http://pair-direct.uspto.gov. Should you have questions on access to the private PAIR system, please contact the Electronic Business Center (EBC) at 1-(866) 217-9197. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 1-(800) 786-9199 (IN USA or CANADA) or 1-(571) 272-1000.

/Dante Ravetti/
Examiner, Art Unit 3685
Sunday, October 25, 2009

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685